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6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA
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9 KEITH THOMAS,

CV F 05-0310 AWI DLB HC

10 Petitioner,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS OF MAY 20, 2005
AND DENYING ANY OUTSTANDING
MOTIONS AS MOOT

11 v.

12 A.K. SCRIBNER, WARDEN

[Doc. 6]

13 Respondent.
14 _____/

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16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
pursuant to 28 U.S.C. § 2254.

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18 Petitioner filed the instant petition for writ of habeas corpus on March 3, 2005. On May
19 18, 2005, Petitioner filed a second amended petition. On May 20, 2005, the Magistrate Judge
20 issued Findings and Recommendations recommending that the instant petition for writ of habeas
21 be DISMISSED for failure to state a cognizable claim pursuant to § 2254. This Findings and
22 Recommendation was served on all parties and contained notice that any objections were to be
23 filed within thirty (30) days of the date of service of the order. On August 26, 2005, and
24 November 15, 2005, Petitioner filed objections to the Findings and Recommendation.

25 In his objections, Petitioner contends that he filed the instant petition pursuant to 28
26 U.S.C. § 2241. Petitioner is advised, however, that the initial and amended petition were both
27 filed pursuant to § 2254. In any event, even if the petition was filed pursuant to § 2241, it is still
28 not cognizable. Writ of habeas corpus relief extends to a person in custody under the authority of

1 the United States. See 28 U.S.C. § 2241. Writ of habeas corpus relief is available if a prisoner
2 can show he is "in custody in violation of the Constitution or laws or treaties of the United
3 States." 28 U.S.C. § 2241(c)(3). The instant petition challenges the failure of prison officials to
4 adhere to the administrative grievance procedure and does not challenge the constitutionality of
5 Petitioner's custody and is therefore not cognizable pursuant to § 2241. Petitioner's objections
6 present no grounds for questioning the Magistrate Judge's analysis.

7 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted
8 a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's
9 objections, the Court concludes that the Magistrate Judge's Findings and Recommendations is
10 supported by the record and proper analysis. The Court notes that although the Findings and
11 Recommendations addressed the first, not amended petition, the amended petition raises the
12 same claims raised in the first petition and therefore the Recommendation to dismiss is supported
13 by the record.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Findings and Recommendations issued May 20, 2005, is ADOPTED IN
16 FULL;
- 17 2. The Petition for Writ of Habeas Corpus is DISMISSED;
- 18 3. The Clerk of the Court is DIRECTED to close this action. This terminates this
19 action in its entirety; and
- 20 4. All pending motions are DENIED as moot.

21 IT IS SO ORDERED.

22 **Dated: December 5, 2005**
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/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE